

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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8 UNITED STATES OF AMERICA,)
9 Plaintiff,) 2:11-cr-120-RLH-CWH
10 vs.)
11 GEORGE E. ANDERSON and)
12 ANDREW SWAN,)
13 Defendants.)

O R D E R
(Motion to Sever #69)

Before the Court is Defendant Swan's **Motion to Sever** (#69, filed January 4, 2013).

15 The United States immediately filed its Response (#70, also filed January 4, 2013). The Motion to
16 Sever will be denied. Defendant Swan has failed to establish a sufficient basis for the Motion.

17 This matter is set for trial on January 28, 2013. Defendants are charged with Wire
18 Fraud and Conspiracy to Commit Wire Fraud. Swan asserts, as bases for his motion, that Anderson
19 would offer exculpatory testimony and there is a danger of the jury finding Swan guilty by associa-
20 tion.

Severance is left to the trial court's discretion. *United States v. Little*, 753 F.2d 1420, 1446 (9th Cir. 1984). “[J]oinder is the rule rather than the exception.” *United States v. Armstrong*, 621 F.2d 951, 954 (9th Cir. 1980). Joint trials “promote efficiency and serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts.” *Zafiro v. United States*, 506 U.S. 534, 537 (1993).

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Defendant Swan has failed to show that he would call Defendant Anderson to testify, that Anderson would, in fact, testify, and that the testimony would be favorable to Swan. *See Little*, at 1146 (citing *United States Siefert*, 648 F.2d 557, 563 (9th Cir. 1980)).

As to the fear of guilt by association, they are both charged in the same criminal indictment which includes a charge of conspiracy, which requires the government to prove association.

Defendant Swan also contends that he was only involved in a few homes. In fact, he, either personally, or his father-in-law through him, was involved in all the eight homes identified in the indictment.

Defendant Swan presents no sufficient basis for severing the trial of this matter.

IT IS THEREFORE ORDERED that Defendant Swan's **Motion to Sever** (#69 is DENIED.

Dated: January 23, 2013.

**Roger L. Hunt
United States District Judge**